11-28-2016

Sauer v. Jefferson County Appellant's Brief Dckt. 44417

IN THE SUPREME COURT OF THE STATE OF IDAHO

Ngansi Magdalene Sauer,

Plaintiff/Appellant,

vs.

Jefferson County; and **Jefferson County Sheriff's Department**, a Division thereof; and Officer **John Clements**, as an Agent of the Jefferson County Sheriff's Office,

Defendants/Respondents.

Supreme Court Case No. 44417

Jefferson County
Case No. CV-15-2015-0024

APPELLANT'S BRIEF

Appeal from the District Court of the Seventh Judicial District, Jefferson County.
Honorable Alan C. Stephens, District Judge presiding.

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STATEMENT OF THE CASE

This is an appeal from a *Judgment Re Attorney Fees* entered following the order of summary judgment in favor of Defendants. Plaintiff is appealing only the award of attorney fees, based on the trial court's errors of law, abuse of discretion, and failure to make specific findings of fact. Plaintiff requests that the Judgment be reversed in its entirety.

The relevant background is as follows: the Plaintiff, Ms. Sauer, was forcibly removed from her vehicle and arrested by Defendant Officer John Clements, an agent of Defendant Jefferson County Sheriff's Department. *See* R. pp. 153–157. This forcible removal and arrest occurred in the context of a traffic stop on January 16, 2013. *See* R. pp. 153–157. The charges against Ms. Sauer were ultimately dismissed on motion of the prosecutor. R. p. 295, ¶ 20. Ms. Sauer hired a private investigator, who informed Ms. Sauer that Officer Clements fabricated the reasonable suspicion for her stop, and probable cause for her arrest (ostensibly for "eluding"). *See* R. pp.260–268. Ms. Sauer then brought suit against the Defendants, alleging in relevant part that Officer Clements applied excessive force and falsely imprisoned her, both of which are violations of her federal constitutional rights; and that she was entitled to relief under 42 USC § 1983. R. pp. 14–16.

Following substantial discovery, the Defendants moved for summary judgment on the basis that Ms. Sauer could not prove her claims, and that Defendants were entitled to qualified immunity. R. pp. 151–176. The trial court agreed (based largely on the court's improper weighing of conflicting evidence) and summary judgment was granted. R. pp. 689–702.

Defendants then filed a *Memorandum of Authority in Support of Costs and Attorneys' Fees Against Plaintiff*, claiming (1) that Ms. Sauer brought her state law claims in "bad faith," entitling Defendants to attorney fees for defending the state claims; and (2) generally that Plaintiff's federal law claims were unsupportable, but without citing any particular

authority or standard. R. pp. 714–724. Despite their allegations that the case was brought frivolously, Defendants noted that there were "several novel and difficult questions involved in this litigation." R. p. 724. Ms. Sauer timely moved to disallow the attorney fees on the basis that Defendants had not proven that Ms. Sauer brought her state law claims in "bad faith," or her federal law claims "frivolously." R. pp. 751–753.

The trial court heard Ms. Sauer's motion to disallow attorney fees on June 20, 2016. During the hearing, the court invited discussion and arguments about the proper standards for awarding attorney fees. Tr. p. 15–16. The court understood that there were two different standards for the award of attorney fees under state and federal law. In order to be entitled to the attorney fees incurred in defending the state law claim the Defendants had to establish that Ms. Sauer brought the case in bad faith, yet to be entitled to attorney fees incurred in defending the federal law claim, the Defendants had to prove that Plaintiff brought and/or pursued the same frivolously, unreasonably or without foundation. The court particularly struggled with the question of how to award fees only for the defense of one of the two sets of claims. Tr. pp. 14–16. Counsel for Ms. Sauer argued that because Defendants had not apportioned their fees between the defense of the state claims and the defense of the federal claims, there should be no award if fees were allowable for only one of the two sets of claims. Tr. p. 9. Defendants' counsel argued contrarily that because the claims were all inseparably "intertwined," the fees could not be segregated and all of Defendants' fees should be allowable. Tr. pp. 13–14.

The trial court granted Defendants' fee award in part. Without making any findings of fact, the court concluded that although the state law claims were *not* brought in "bad faith," the federal claims were brought "frivolously, unreasonably, or without foundation." R. pp. 766–767. The court then recognized the question of "what should happen when the prevailing party fails to distinguish between the State Law Claims and the 1983 claim in the

memorandum of costs and fees." R. p. 767. However, the court did not answer that question. Instead, the court concluded, without any apparent basis in fact, that 50% of the total fees claimed were allocable to the § 1983 claim. The court believed "that an award of this amount was within its discretion and best divides the fees, absent additional evidence." R. p. 767. Ms. Sauer timely requested a final judgment, and filed this appeal from the award of attorney fees only.

ISSUES PRESENTED ON APPEAL

A. Whether the trial court abused its discretion by applying an incorrect standard for fee awards and allocating 50% of the Defendants' fees to the allowable claim?

B. Whether an award of attorney fees under 42 USC § 1988 has been precluded by the evidence that all of the claims were "completely intertwined?"

C. Whether the absence of findings of fact and conclusions of law regarding the award of attorney fees requires reversal of the *Judgment Re Attorney Fees*?

ARGUMENT

The *Judgment Re Attorney Fees* should be reversed without remand. The failure of the trial court to make findings of fact, by itself, necessitates reversal. Further however, the trial court abused its discretion by failing to apply the correct standard for awarding fees under 42 USC § 1988, and the evidence and arguments in the record preclude Defendants from proving their claim for fees under the correct standard. Because Defendants cannot prove their attorney fee claim, remand would be futile.

A. The trial court abused its discretion by failing to apply the correct standard for awarding fees under 42 USC §1983.

A party that successfully defends a civil rights case brought under 42 USC § 1983 may recover attorney fees under 42 USC § 1988 only if the case was brought frivolously, unreasonably, or without foundation. *C.W. ex rel K.S. v. Capistrano Unified School*, 779 F.

3d 956, 963 (9th Cir. 2015) (applying standard set forth in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978)). *See also Nation v. State of Idaho*, 158 P. 3d 953 969 (Idaho 2007). A case is frivolous "only when the result is obvious," or the claim lacks legal foundation. *C.W. ex rel K.S.*, 779 F. 3d at 963. "Attorneys' fees in civil rights cases should only be awarded to a defendant in exceptional circumstances." *Barry v. Fowler*, 902 F. 2d 770, 773 (9th Cir. 1990). A claim is not "frivolous" merely because the defendant ultimately prevailed. "It is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." *C.W. ex rel K.S.*, 779 F. 3d at 963; *Christiansburg*, 434 U.S. at 422. Allegations that, upon careful examination, prove legally insufficient to require a trial are not, for that reason alone, "groundless" or "without foundation". *Hughes v. Rowe*, 449 U.S. 5, 15–16, 101 S. Ct. 173, 179, 66 L. Ed. 2d 163 (1980).

If a claim is determined to be frivolous, the prevailing defendant then has the burden of "establishing that the fees for which it is asking are in fact incurred solely by virtue of the need to defend against those frivolous claims." *C.W. ex rel K.S.*, 779 F. 3d at 968. In other words, the defendant may receive "only the portion of his fees that he would not have paid *but for* the frivolous claim." *Fox v. Vice*, 131 S.Ct. 2205, 2215 (2011) (emphasis added).

The trial court concluded that Ms. Sauer's § 1983 claims were frivolous, but did not apply the foregoing tests. In fact, it did not apply any tests, or make any necessary findings of fact; but instead arbitrarily allocated 50% of the total fees requested to the defense of the § 1983 claim without stating any basis other than "discretion." In fact, the trial court even pointed out that it lacked the "further evidence" it would need to base its decision upon reason.

The trial court does not have discretion to baselessly award an arbitrary percentage of fees. On the contrary—a trial court "must determine whether the fees requested would not have accrued but for the frivolous claim. And the appeals court must determine whether the trial court asked and answered that question, rather than some other. A trial court has wide discretion when, but only when, it calls the game by the right rules." *Fox*, 131 S. Ct. at 2216–17. A failure to do so is error, and an abuse of discretion. *Id.* at 2216.

B. There is no evidence in the record to support an award of fees under 42 USC § 1988, in any amount, and so the award of fees should be reversed without remand.

Defendants argued that their work defending the federal claims was "completely intertwined" with and could not be segregated from their work defending the state law claims, for which the trial court did not award fees. This admission precludes any argument they might bring, on appeal or on remand, that the trial court could have correctly awarded fees under § 1988.

When a trial court fails to make necessary findings to support its conclusion, the usual result is a reversal by the appellate court with remand to make those necessary findings. However, if there is no evidence in the record on appeal that would support any additional findings the court could make on remand to support its judgment, then remand is futile, and the judgment is simply reversed. *Pope v. Intermountain Gas Co.*, 646 P.2d 988, 996 (1982).

In this case, the statements and arguments of Defendants in the record preclude their claim for fees under § 1988. On remand, Defendants would have the burden of proving that they would not have incurred the claimed fees *but for* Ms. Sauer's allegedly frivolous federal claims. However, they admitted the exact opposite: that the state and federal claims were "completely intertwined," Tr. p. 13, ll. 11–12; that "[t]hey overlap," Tr. p. 13, l. 12; and "all the work that was done in this case was done for both the state claim and the federal claims,

and the same defenses apply." Tr. p. 14, l. 3–5. In other words, Defendants have already conceded that they would have incurred the same fees and costs for Ms. Sauer's state claims, for which fees were not allowed. There is no possibility that they can prove the exact opposite now: that the claimed fees would not have been incurred but for the allegedly frivolous federal claims. Because Defendants have no possibility of proving their fees under the correct standard, remand would be futile.

C. The trial court's failure to make appropriate findings of fact, by itself, necessitates reversal.

The trial court made no findings of fact, and only the bare minimum legal conclusions, in its *Judgment Re Attorney Fees*. This failure alone requires reversal of the Judgment. "When the court sits as the trier of fact, it is charged with the duty of preparing findings of fact and conclusions of law in support of the decision which it reaches." *Pope v. Intermountain Gas Co.*, 646 P.2d 988, 996 (1982); I.R.C.P 52(a). The purpose of this duty is to afford the appellate court a clear understanding of the basis of the trial court's decision. *Pope*, 646 P.2d at 996. "The absence of findings and conclusions may be disregarded by the appellate court *only* where the record is clear, and yields an obvious answer to the relevant question. *Id.* (emphasis in original). "Absent such circumstances, the failure of the trial court to make findings of fact and conclusions of law . . . will necessitate a reversal of the judgment and remand for additional findings and conclusions, unless such findings and conclusions would not affect the judgment entered." *Id.*

The failure of a trial court to make specific findings of fact, *by itself*, necessitates reversal. It need not be compounded with any other error. "In failing to make its own findings, the trial court erred . . . . For that reason alone, the judgment of the trial court would have to be vacated . . . ." *Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 824 P. 2d 841, 849 (Idaho 1991).

In this case, the trial court reached the conclusion that the Plaintiff's claim under 42 U.S.C. § 1983 was brought frivolously, unreasonably, or without foundation—but made no findings of fact whatsoever to support that conclusion. R., p. 766–767. The trial court further determined that 50% of the total fees requested were allocable to the §1983 claim, again, without making any findings of fact or delineating any basis for the conclusion. R., p. 766–767. Apparently, the trial court believed that it had "discretion" to arbitrarily allocate the fees "absent additional evidence." R., p. 767. This was a clear dereliction of the trial court's duty to make findings of fact under I.R.C.P. 52(a). This failure alone necessitates a reversal of the *Judgment Re Attorney Fees*.

CONCLUSION

Because of the above-described errors by the trial court, and the Defendants' admissions that preclude the finding of necessary support for the judgment on remand, the Plaintiff respectfully requests that this court reverse the trial court's *Judgment Re Attorney Fees* without remand.

Dated this 23 day of November, 2016.

James A. Herring, Esq.
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I certify that on the 23 day of November, 2016, I mailed a copy of the foregoing in the United States mail with postage prepaid to the following parties at the addresses set forth below:

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